

House File 2421 - Introduced

HOUSE FILE 2421

BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 699)

A BILL FOR

1 An Act requiring that prevailing wage rates by locality be
2 paid to persons working on public improvements for public
3 bodies, unless by public resolution a political subdivision
4 of the state chooses not to utilize the prevailing wage rate
5 for a public improvement project, providing penalties, and
6 including effective date and applicability provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 84A.5, subsection 4, Code Supplement
2 2009, is amended to read as follows:

3 4. The division of labor services is responsible for the
4 administration of the laws of this state under chapters 88,
5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
6 and 94A, and section 85.68. The executive head of the division
7 is the labor commissioner, appointed pursuant to section 91.2.

8 Sec. 2. Section 91.4, Code 2009, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 11. To determine the prevailing wage rates
11 pursuant to chapter 91F.

12 Sec. 3. NEW SECTION. 91F.1 Short title.

13 This chapter shall be known and may be cited as the "*Public*
14 *Improvement Quality Protection and Safety Act*".

15 Sec. 4. NEW SECTION. 91F.2 Public policy.

16 It is in the public interest that public improvements
17 are completed by the best means and highest quality of labor
18 reasonably available, and that workers on public improvements
19 be compensated according to the real value of the services
20 they perform. It is the policy of this state that the wages
21 of workers on public improvements should be at least equal to
22 the prevailing wage rates paid for similar work by responsible
23 contractors in the community as a whole in order to accomplish
24 all of the following:

25 1. Protect workers and their contractors and subcontractors
26 from the effects of serious and unfair competition resulting
27 from wage levels detrimental to efficiency and well-being.

28 2. Ensure that contractors compete with one another on the
29 basis of the ability to perform work competently, efficiently,
30 and safely while maintaining community-established compensation
31 standards.

32 3. Recognize that local participation in public
33 improvements and local provision of wage income and benefits
34 are essential to the protection of community standards.

35 4. Encourage training and education of workers to industry

1 skill standards while requiring safety training.

2 5. Encourage contractors and subcontractors to use funds
3 allocated for employee fringe benefits for the actual purchase
4 of those benefits.

5 6. Recognize that political subdivisions, because of
6 circumstances unique to their communities at a given time, may
7 deem it beneficial to not require that prevailing wage rates be
8 paid on a particular public improvement project.

9 Sec. 5. NEW SECTION. 91F.3 Definitions.

10 As used in this chapter, unless the context otherwise
11 requires:

12 1. "*Commissioner*" means the labor commissioner appointed
13 pursuant to section 91.2 or the labor commissioner's designee.

14 2. "*Contractor*" or "*subcontractor*" means a person who
15 undertakes, offers to undertake, purports to have the capacity
16 to undertake, or submits a bid, individually or through others,
17 to engage in a public improvement.

18 3. "*Division*" means the division of labor of the department
19 of workforce development.

20 4. a. "*Fringe benefits*" means the following provision or
21 purchases of any of the benefits enumerated in paragraph "b".

22 (1) Contributions irrevocably made by a contractor or
23 subcontractor to a trustee or to a third person pursuant to a
24 plan, fund, or program.

25 (2) The costs to the contractor or subcontractor which are
26 reasonably related to providing benefits to workers pursuant
27 to an enforceable commitment to carry out a financially
28 responsible plan or program, given in writing to the workers
29 affected.

30 b. The following benefits are fringe benefits:

31 (1) Health insurance.

32 (2) Pension, retirement, or annuity benefits.

33 (3) Defraying costs of apprenticeship programs approved and
34 registered with the United States department of labor's office
35 of apprenticeship.

1 5. *"Horizontal and transportation infrastructure"* means
2 water treatment and filtration plants and stations, water
3 mains, storm water and sanitary sewers, sewage lagoons,
4 drainage projects, tile lines, locks, dams, levees, revetments,
5 river channels, retaining walls, shafts, tunnels, subways,
6 airport airfields, athletic fields, golf courses, bicycle and
7 pedestrian paths, sidewalks, fences, alleys, guard rails,
8 parking areas, right-of-way clearing, vertical infrastructure
9 site development, bridges, culverts, and roads and street
10 public improvement projects as defined in section 306.3.

11 6. *"Interested party"* means any of the following:

12 a. A contractor who submits a bid for the purpose of
13 securing the award of a contract for a public improvement.

14 b. A subcontractor of a contractor mentioned in a bid
15 referred to in paragraph "a".

16 c. A worker employed by a contractor or subcontractor
17 described in either paragraph "a" or "b".

18 d. A labor organization that represents workers engaged
19 in the same craft or classification as workers employed by a
20 contractor or subcontractor described in either paragraph "a"
21 or "b" and that exists, in whole or in part, for the purpose
22 of negotiating with employers concerning the wages, hours, or
23 terms and conditions of employment of employees.

24 e. A joint labor-management committee established pursuant
25 to the federal Labor Management Cooperation Act of 1978, 29
26 U.S.C. § 175a.

27 f. The division of labor of the department of workforce
28 development.

29 g. The department of transportation.

30 7. *"Locality"* means a county of this state and for
31 prevailing wage rate purposes is determined by the physical
32 location of the public improvement.

33 8. *"Maintenance work"* means the repair of existing public
34 improvements when the size, type, or extent of the public
35 improvement is not changed or increased.

1 9. "*Political subdivision*" means a county, city, or school
2 district.

3 10. "*Prevailing wage rate*" means the hourly wage rate plus
4 fringe benefit rate which the commissioner determines most
5 often occurs in accordance with this chapter.

6 11. "*Public body*" means the state or any of its political
7 subdivisions, the state board of regents, or a community
8 college.

9 12. *a.* "*Public improvement*" means construction, alteration,
10 reconstruction, repair, rehabilitation, refinishing,
11 refurbishing, remodeling, renovation, installation, or
12 demolition of horizontal and transportation infrastructure or
13 vertical infrastructure, where the estimated total cost of the
14 improvement is one hundred thousand dollars or more and where
15 such improvement meets any of the following requirements:

16 (1) Such improvement is undertaken and performed under the
17 supervision or direction of a public body.

18 (2) Such improvement is located on public property.

19 (3) Fifty-five percent or more of the horizontal and
20 transportation infrastructure or vertical infrastructure is
21 leased to a public body or is subject to a written agreement
22 to be leased by a public body, with vertical infrastructure
23 exceeding twenty thousand square feet.

24 *b.* "*Public improvement*" as defined in paragraph "*a*" includes
25 but is not limited to landscaping; site preparation; grading;
26 paving; excavation; overlay; moving; wrecking; painting;
27 decorating; fabrication of electrical, plumbing, heating,
28 cooling, ventilation, architectural systems, structural systems
29 or exhaust duct systems; mechanical installation; erection of
30 scaffolding; repair, assembly, or disassembly of equipment;
31 maintenance work; testing of materials; cleaning and hauling
32 of refuse to an outside disposal location; preparation and
33 removal of roadway construction zones, lane closures, flagging,
34 and traffic diversions; and the transportation of supplies,
35 material, and equipment to and from the site.

1 13. "*Vertical infrastructure*" means buildings, appurtenant
2 structures, underground storage tanks, and utilities.

3 14. "*Wage*" means the hourly rate of pay earned by an
4 employee and paid by an employer.

5 15. *a.* "*Worker*" means an individual who performs any
6 labor or service for a contractor or subcontractor on a
7 public improvement but does not include an individual when
8 transporting supplies, materials, or equipment for a seller,
9 supplier, manufacturer, or processor of materials or equipment.
10 *b.* The individual is deemed an employee of a contractor or
11 subcontractor unless an independent contractor relationship
12 between the individual and the contractor or subcontractor is
13 intended to be created and all of the following conditions
14 apply:

15 (1) The contractor or subcontractor does not control or
16 direct the performance of services by the individual.

17 (2) The contractor or subcontractor is not responsible for
18 the payment of the individual's wages.

19 (3) The contractor or subcontractor does not have the
20 right to discharge the individual or to terminate the working
21 relationship with the individual.

22 (4) The contractor or subcontractor is not the authority
23 in charge of the work or for whose benefit the individual is
24 providing services.

25 *c.* An individual classified as an employee under this
26 subsection shall also be classified as an employee pursuant to
27 chapters 85, 85A, 85B, 88, 91A, and 96.

28 Sec. 6. NEW SECTION. 91F.4 Determination of prevailing
29 wages.

30 1. The commissioner shall determine annually and publish
31 on the first business day of July, the prevailing wage rates
32 by locality for each craft, classification, or type of worker
33 needed to perform work on public improvements. The rates shall
34 be conclusive for one year from the date of publication unless
35 superseded within the one year by a later publication of the

1 commissioner, or for a longer period as provided in subsection
2 5.

3 2. The commissioner shall announce all prevailing wage rate
4 determinations by locality and give notice by posting them
5 on the portion of the department of workforce development's
6 internet site related to the division. A printed version of
7 the prevailing wage rates for the state shall be available to
8 the public upon request to the division.

9 3. The public body awarding any contract for a public
10 improvement or otherwise undertaking any public improvement,
11 shall obtain from the internet site the prevailing wage rate in
12 the locality in which the public improvement is to be performed
13 for each craft, classification, or type of worker needed
14 to perform work on the public improvement. After a public
15 improvement contract is awarded, or a public improvement is
16 otherwise undertaken, the prevailing wage rate published by the
17 commissioner and stated in the public body's public improvement
18 procurement documents shall remain in effect throughout the
19 duration of the public improvement unless superseded by a later
20 determination and publication by the commissioner, or unless
21 multiyear prevailing wage rates have been published by the
22 commissioner at the time the public improvement procurement
23 documents were released.

24 4. a. (1) Contractors who are registered with the division
25 pursuant to chapter 91C, who participate in an apprenticeship
26 program approved by and registered with the United States
27 department of labor's office of apprenticeship, and who provide
28 fringe benefits for their workers shall submit wage rates and
29 fringe benefits rates data once a year to the division. The
30 commissioner shall create an internet site and paper forms for
31 contractors to submit the required information.

32 (2) All parties shall keep the wage rates and fringe
33 benefits rates information confidential.

34 (3) An individual who intentionally provides misinformation
35 about wage rates, fringe benefits rates, or work locations

1 commits a violation under this chapter and shall be assessed
2 a one-hundred-dollar penalty per violation. A violation
3 under this subsection is grounds for a loss of licensure or
4 registration with the division, as applicable, which shall
5 be in addition to any penalty otherwise authorized by this
6 subsection.

7 *b.* The commissioner shall only accept and use wage rates and
8 fringe benefit rates data submitted by contractors that are in
9 compliance with this subsection.

10 *c.* The prevailing wage rates and fringe benefits rates
11 determined in each locality shall be set at the wage rate and
12 fringe benefits rate that thirty percent or more of those
13 employed in a particular craft, classification, or type of
14 work are paid in total. If a common wage rate and fringe
15 benefits rate is not paid to at least thirty percent of those
16 employed in a particular craft, classification, or type of
17 work, the total of the wage rates and fringe benefits rates
18 of all workers in a particular craft, classification, or type
19 of work shall be calculated and the average wage rate and
20 fringe benefits rate shall be the prevailing wage rate for that
21 particular craft, classification, or type of worker in that
22 locality, if not less than the federally established prevailing
23 wage rate for that locality. If less than the federally
24 established prevailing wage rate for that locality, the
25 commissioner may utilize the federally established prevailing
26 wage rates that apply to that locality.

27 5. Notwithstanding other provisions of this chapter to the
28 contrary, federal Davis-Bacon Act prevailing wage rates and
29 procedures, as defined in 29 C.F.R. pts. 1, 3, and 5, except
30 for 29 C.F.R. § 1.8 and 1.9, and administered by the public
31 body apply to public improvements that are publicly owned
32 horizontal and transportation infrastructure.

33 Sec. 7. NEW SECTION. 91F.5 Prevailing wage rate
34 determination — objections — appeals.

35 1. *a.* (1) Within fifteen days after the division has

1 published on the department of workforce development's internet
2 site the annual prevailing wage rates for each classification,
3 craft, or other type of worker in a locality, an interested
4 party may seek reconsideration of the determination or part of
5 the determination by filing a written objection, which shall
6 include a statement of the interested party's views and other
7 pertinent information, with the commissioner by restricted
8 certified mail as defined in section 618.15.

9 (2) Upon receipt of the written objections, the
10 commissioner shall respond by modifying or denying the
11 determination and providing a written reply by restricted
12 certified mail to the interested party within fifteen days from
13 the date of the receipt of the written objection.

14 (3) The commissioner shall publish a modification to the
15 determination within five business days of notification of the
16 interested party and the modification shall be effective upon
17 publication.

18 b. (1) Within ten days upon receiving receipt of the
19 commissioner's decision, the interested party may file a
20 written appeal to the department of inspections and appeals,
21 which shall set a hearing date before an administrative law
22 judge, who shall be an attorney.

23 (2) The department of inspections and appeals shall give
24 notice by restricted certified mail to the interested party and
25 the division at least ten days before the hearing date of the
26 time and place of the hearing.

27 (3) The hearing shall be held within thirty days after the
28 department of inspections and appeals receives the interested
29 party's written objection, and shall not be postponed or reset
30 for a later date except upon the consent, in writing, of both
31 the interested party and the division.

32 (4) The interested party objecting to the determination
33 set by the division shall have the burden of establishing that
34 the disputed determination was not determined in accordance
35 with this chapter. If the interested party objects to the

1 failure to include a particular craft, classification, or type
2 of worker within the annual prevailing wage rate determination
3 in a locality, the interested party must establish that the
4 particular craft, classification, or type of worker does not
5 exist under a different prevailing wage rate classification in
6 any of the localities under consideration.

7 (5) The administrative law judge may hear each objection
8 filed separately or, if applicable, consolidate two or
9 more objections about the same determination filed with the
10 department of inspections and appeals. The administrative law
11 judge shall render a final determination within twenty days
12 after the conclusion of the hearing.

13 2. An interested party may appeal the final determination
14 of the administrative law judge through judicial review as
15 provided under section 17A.19.

16 3. Notwithstanding section 17A.19, subsection 5, paragraph
17 "c", this section does not give reason or provide cause for an
18 injunction to halt or delay any public improvement.

19 Sec. 8. NEW SECTION. 91F.6 Payment of prevailing wage rates
20 required.

21 1. Contractors and subcontractors engaged in a public
22 improvement shall not pay less than the current specified
23 prevailing wage rates per pay period to all of their workers
24 engaged in the public improvement. However, this chapter does
25 not prohibit the payment of more than the prevailing wage rate
26 to any workers engaged in a public improvement.

27 2. All contractors and subcontractors required to pay the
28 prevailing wage rate under this chapter shall make payment,
29 without any deduction for food, sleeping accommodations,
30 transportation, use of tools or safety equipment, vehicle
31 or equipment rental, or any other thing of any kind or
32 description.

33 Sec. 9. NEW SECTION. 91F.7 Requirements for public
34 improvements.

35 1. The public body awarding a contract for a public

1 improvement or otherwise undertaking a public improvement shall
2 specify in the call for bids for the contract that this chapter
3 applies to the public improvement. All bid specifications
4 shall list the specified prevailing wage rates for all crafts,
5 classifications, or types of workers in the locality for each
6 worker needed to be included in the contract.

7 2. If a contract is let for a public improvement requiring
8 the payment of prevailing wage rates, the public body
9 awarding the contract shall cause to be inserted in the public
10 improvement specifications and contract a stipulation that
11 no less than the prevailing wage rates shall be paid to all
12 workers performing work under the contract. The contract
13 shall also contain a provision that if it is found that any
14 of the contractor's or subcontractor's workers engaged in the
15 public improvement have been paid at a wage rate less than the
16 prevailing wage rates required by this chapter, the public body
17 may terminate the contractor's or subcontractor's right to
18 proceed with the work and the contractor and its sureties shall
19 be liable to the public body for any excess costs occasioned by
20 the failure to pay the prevailing wage rates. If a subcontract
21 is let for a public improvement, the provisions of this
22 subsection apply to contracts with lower-tier subcontractors
23 and their workers.

24 3. A contractor and subcontractor engaging in a public
25 improvement shall submit a performance bond in an amount
26 determined by the public body.

27 4. The public body awarding a contract for a public
28 improvement or otherwise undertaking a public improvement shall
29 notify the commissioner in writing, on a form prescribed by
30 the commissioner, if a contract subject to the provisions of
31 this chapter has been awarded. The public body shall file the
32 notification with the commissioner within thirty days after
33 the contract is awarded or before commencement of the public
34 improvement, whichever is sooner, and shall include a list of
35 all first-tier subcontractors.

1 5. All workers who perform any labor or service for a
2 contractor or subcontractor on a public improvement must
3 complete prior to commencing work on the public improvement a
4 minimum ten-hour construction safety program approved by the
5 United States occupational safety and health administration.

6 6. A political subdivision may choose by adopting a
7 resolution, after providing public notice of the proposed
8 resolution and prior to the letting of a public improvement for
9 bids, not to require prevailing wage rates to be paid for the
10 particular public improvement.

11 Sec. 10. NEW SECTION. 91F.8 Federal public improvements
12 **— not applicable.**

13 The provisions of this chapter shall not be applicable to
14 public improvements financed by federal funds which require a
15 pay or wage rate determination by the United States department
16 of labor. If a public improvement is financed in part by a
17 public body and in part by federal funds, the higher of the pay
18 or wage rates shall be utilized for the public improvement.

19 Sec. 11. NEW SECTION. 91F.9 Records required.

20 While participating in a public improvement, the contractor
21 and each subcontractor shall do all of the following:

22 1. Make and keep, for a period of not less than three years,
23 accurate records of all workers employed by the contractor or
24 subcontractor on the public improvement. The records shall
25 include each worker's name, address, telephone number when
26 available, social security number, trade classification, the
27 hourly wages paid in each pay period, the number of hours
28 worked each day, and the starting and ending times of work each
29 day.

30 2. Submit monthly certified payroll records to the public
31 body responsible for the public improvement. The public body
32 shall retain such records for three years.

33 3. Post the prevailing wage rates for each craft,
34 classification, or type of workers involved in the public
35 improvement in a prominent and easily accessible place at the

1 site of the public improvement or at the place or places used
2 by the contractor or subcontractor to pay workers their wages.

3 Sec. 12. NEW SECTION. **91F.10 Powers of commissioner.**

4 1. The commissioner and the division shall administer this
5 chapter in accordance with chapter 17A, and the commissioner
6 shall adopt rules for the administration and enforcement of
7 this chapter as provided in section 91.6.

8 2. The commissioner shall enforce the provisions of this
9 chapter. The commissioner may hold hearings and investigate
10 charges of violations of this chapter.

11 3. The commissioner may, consistent with due process of law,
12 enter any place of employment to inspect records concerning
13 wages and payrolls, to question the employer and employees, and
14 to investigate such facts, conditions, or matters as are deemed
15 appropriate in determining whether any person has violated
16 the provisions of this chapter. However, such entry by the
17 commissioner shall only be in response to a written complaint.

18 4. The commissioner shall develop a written complaint form
19 applicable for this chapter and make it available in division
20 offices and on the department of workforce development's
21 internet site.

22 5. The commissioner may sue for injunctive relief against
23 the awarding of a contract, the undertaking of a public
24 improvement, or the continuation of a public improvement when
25 the prevailing wage rate requirements of this chapter have not
26 been met.

27 6. The commissioner may investigate and ascertain the wages
28 of workers engaged in any public improvement in this state.

29 7. The commissioner may administer oaths, take or cause to
30 be taken depositions of witnesses, and require by subpoena the
31 attendance and testimony of witnesses and the production of all
32 books, registers, payrolls, and other evidence relative to the
33 matter under investigation or hearing.

34 8. The commissioner may employ such qualified personnel
35 as are necessary for the enforcement of this chapter. Such

1 personnel shall be employed pursuant to chapter 8A, subchapter
2 IV.

3 9. The commissioner shall require a contractor or
4 subcontractor to file, within ten days of receipt of a request,
5 any records enumerated in section 91F.9. If the contractor or
6 subcontractor fails to provide the requested records within ten
7 days, the commission may direct, within fifteen days after the
8 end of the ten-day period, that the fiscal or financial officer
9 charged with the custody and disbursements of the funds of the
10 public body, which contracted for construction of the public
11 improvement or undertook the public improvement, to immediately
12 withhold from payment to the contractor or subcontractor
13 up to twenty-five percent of the amount to be paid to the
14 contractor or subcontractor under the terms of the contract
15 or written instrument under which the public improvement is
16 being performed. The amount withheld shall be immediately
17 released upon receipt by the public body of a notice from
18 the commissioner indicating that the request for records as
19 required by this section has been satisfied.

20 Sec. 13. NEW SECTION. 91F.11 Notice of violations.

21 1. For purposes of this section:

22 a. "*Accurate records*" means the hourly rate of contribution
23 and costs paid for fringe benefits and whether the
24 contributions and costs of the fringe benefits were paid into a
25 fund or paid directly to the worker.

26 b. "*Decision*" means a determination by the division that a
27 single violation of this chapter has occurred, warranting the
28 commissioner to issue a notice of violation to a contractor or
29 subcontractor.

30 c. "*Notice of second violation*" is a formal written notice
31 issued by the division advising a contractor or subcontractor
32 that a second or subsequent violation has occurred within three
33 years from the date of the notice of a first violation.

34 d. "*Notice of violation*" means a formal written notice
35 issued by the division to a contractor or subcontractor

1 that the division has made a decision that the contractor or
2 subcontractor has violated this chapter.

3 *e.* "Violation" means a written decision by the division that
4 a contractor or subcontractor has done one of the following:

5 (1) Failed or refused to pay the prevailing wage rates to
6 one or more workers as required by this chapter.

7 (2) Failed to keep accurate records as required by this
8 chapter.

9 (3) Failed to produce for the division accurate records or
10 produced records not in compliance with this chapter.

11 (4) Refused to submit records or testimony to the division
12 in response to a subpoena issued in accordance with this
13 chapter.

14 (5) Refused the division access, at any reasonable hour at
15 a location within the state, to inspect the contractor's or
16 subcontractor's records as required by this chapter.

17 (6) Failed to insert into a contract, a written stipulation
18 that not less than the prevailing wage rates be paid as
19 required by this chapter.

20 (7) Failed to post the prevailing wage rates as required by
21 this chapter.

22 (8) Failed to submit or retain certified payroll records.

23 2. After receipt of a written complaint by an interested
24 party or on the division's initiative, the commissioner shall
25 review the investigative file to determine whether a violation
26 has occurred for which the contractor or subcontractor must
27 be given notice. All information gathered during an audit or
28 investigation shall be considered and shall constitute the
29 basis for the division's decision that this chapter has been
30 violated and that a notice of violation is required to be
31 issued. The notice of violation shall identify the specific
32 violation and the amount of moneys estimated due the interested
33 party and in controversy based on reasons contained in the
34 investigative file.

35 3. In making a decision that a contractor or subcontractor

1 has failed to allow the commissioner access to accurate
2 records, the commissioner shall rely on the information
3 contained in the investigative file, and shall assess a
4 separate violation for each day worked by each worker on the
5 public improvement. Each decision of a separate violation
6 shall be listed in the notice of violation.

7 4. In determining that this chapter has been violated and
8 that the issuance of a notice of violation is required, the
9 commissioner shall base the decision on one or any combination
10 of the following reasons:

11 a. The severity of the violations, which includes the
12 following:

13 (1) The amount of wages that are determined to be underpaid
14 pursuant to this chapter.

15 (2) The activity or conduct complained of that violates the
16 requirements of this chapter and was not merely a technical,
17 nonsubstantive error. Examples of a technical, nonsubstantive
18 error include but are not limited to a mathematical error,
19 bookkeeping error, transposition of numbers, or computer or
20 programming error.

21 b. The nature and duration of the present violation and the
22 prior history of the contractor or subcontractor related to
23 this history. The prior history considered shall not exceed
24 seven years before the date of the notice of violation.

25 c. Whether the contractor or subcontractor has kept payroll
26 records and accurate records for three years and whether
27 the contractor or subcontractor produced payroll records in
28 accordance with section 91F.9.

29 d. Whether the contractor or subcontractor has violated any
30 other provision of this chapter.

31 5. The notices of the first, second, and subsequent
32 violations shall be sent by restricted certified mail,
33 addressed to the last known address of the contractor or
34 subcontractor involved. The notices shall contain a reference
35 to the specific provisions of this chapter alleged to have been

1 violated, identify the particular public improvement involved,
2 identify the conduct complained of, and identify whether the
3 notice is a first, second, or subsequent notice, and include a
4 contractor's or subcontractor's statement of liabilities.

5 Sec. 14. NEW SECTION. **91F.12 Violations — remedies.**

6 1. If the commission determines that a public body has
7 divided a public improvement into more than one contract for
8 the purpose of avoiding compliance with this chapter, the
9 commissioner shall issue an order compelling compliance. In
10 making a determination whether a public body has divided a
11 public improvement into more than one contract for the purpose
12 of avoiding compliance with this chapter, the commissioner
13 shall consider all of the following:

14 *a.* The physical separation of the public improvement
15 structures.

16 *b.* The timing of the work on the public improvement phases
17 or structures.

18 *c.* The continuity of public improvement contractors and
19 subcontractors working on public improvement parts or phases.

20 *d.* The manner in which the public body and the contractor
21 and subcontractors administer and implement work on the public
22 improvement.

23 2. A worker employed by the contractor and subcontractor
24 who is paid less than the specified prevailing wage rates
25 under this chapter shall have a private right of action for
26 the difference between the amount so paid and the specified
27 prevailing wage rates, and punitive damages, if appropriate,
28 together with costs and reasonable attorney fees as shall be
29 allowed by the court, and the contractor or subcontractor shall
30 additionally be liable to the division for fifty percent of the
31 underpayments.

32 3. If a second or subsequent action to recover underpayments
33 is brought against a contractor or subcontractor within a
34 three-year period and the contractor or subcontractor is
35 found liable for underpayments to a worker, the contractor or

1 subcontractor shall be liable to the division for seventy-five
2 percent of the underpayments payable as a result of the second
3 or subsequent action. The three-year period begins to run from
4 the date the contractor or subcontractor is determined liable
5 for the first violation.

6 4. The commissioner and any interested party shall also
7 have a right of action on behalf of a worker who has a right
8 of action under this chapter. An action brought to recover
9 the same shall be deemed to be a suit for wages, and all
10 judgments entered in the action shall have the same force and
11 effect as other judgments for wages. At the request of a
12 worker employed by a contractor or subcontractor who is paid
13 less than the prevailing wage rates required by this chapter,
14 the commissioner may take an assignment of the wage claim
15 in trust for the assigning worker and may bring any legal
16 action necessary to collect the claim, and the contractor or
17 subcontractor shall be required to pay the expenses of the
18 division incurred in collecting the claim.

19 5. a. It is a violation of this chapter for a contractor or
20 subcontractor to do any of the following:

21 (1) To request or demand, either before or after the worker
22 is engaged, that a worker pay back, return, donate, contribute,
23 or give any part or all of the worker's pay, salary, or thing of
24 value, to any person, upon the statement, representation, or
25 understanding that failure to comply with the request or demand
26 will prevent the worker from procuring or retaining employment.

27 (2) To directly or indirectly pay, request, or authorize any
28 other person to violate this chapter.

29 b. This subsection does not apply to an agent or
30 representative of a duly constituted labor organization acting
31 in the collection of dues or assessments from the members of
32 the organization.

33 6. In addition to other penalties provided under this
34 chapter, whoever induces a worker working on a public
35 improvement subject to this chapter to give up or forego

1 any part of the prevailing wage rates to which the worker
2 is entitled under this chapter by threat not to employ or
3 by threat of dismissal from employment commits a serious
4 misdemeanor. An agreement between the worker and the
5 contractor or subcontractor to work for less than the specified
6 prevailing wage rates shall not be a defense to criminal
7 prosecution.

8 7. A contract shall not be awarded for a period of up
9 to three years to a contractor or subcontractor who, on
10 two separate occasions within a three-year period, has been
11 determined by the commissioner to have violated this chapter.

12 8. If the division determines that a contractor or
13 subcontractor has violated this chapter on two separate
14 occasions within a three-year period, the division shall list
15 on the department of workforce development's internet site and
16 keep on record the name of the contractor or subcontractor and
17 give notice by restricted certified mail of the list to any
18 public body requesting the list.

19 9. Upon a determination that a contractor or subcontractor
20 may have violated this chapter on two separate occasions within
21 a three-year period, the division shall notify the violating
22 contractor or subcontractor by restricted certified mail.

23 a. The contractor or subcontractor has thirty working days
24 to request of the division a hearing before an administrative
25 law judge on the alleged violation. Failure to respond within
26 thirty working days shall result in an immediate and indefinite
27 barring of the violator from work on public improvements
28 and placement and publication of the violator's name on the
29 department of workforce development's internet site.

30 b. If the contractor or subcontractor requests a hearing
31 within thirty working days by restricted certified mail, the
32 department of inspections and appeals shall set a hearing
33 before an administrative law judge on the alleged violation to
34 determine the length of the contractor's or subcontractor's
35 bar, if any, not to exceed three years. The hearing shall take

1 place no later than thirty calendar days after the receipt by
2 the division of the request for a hearing. An action by an
3 administrative law judge constitutes final agency action and is
4 subject to judicial review under section 17A.19.

5 10. This section does not give reason or provide cause for
6 an injunction to halt or delay any public improvement. Any
7 penalties recovered pursuant to this chapter shall be deposited
8 in the general fund of the state.

9 Sec. 15. NEW SECTION. 91F.13 **Apprentices.**

10 This chapter shall not prevent the employment of apprentices
11 on public improvements. However, an apprentice employed
12 on a public improvement must be registered with the United
13 States department of labor's office of apprenticeship under
14 an apprenticeship program registered with that office, paid
15 the proper wages specified in the standards of apprenticeship,
16 and engaged only in the trade to which the apprentice is
17 registered. If the apprentice is employed on a public
18 improvement in a trade to which the apprentice is not
19 registered with the United States department of labor's office
20 of apprenticeship, the apprentice shall be treated as any other
21 worker under this chapter.

22 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
23 3, shall not apply to this Act.

24 Sec. 17. EMERGENCY RULES. The commissioner may adopt
25 emergency rules under section 17A.4, subsection 3, and section
26 17A.5, subsection 2, paragraph "b", to implement the provisions
27 of this Act and the rules shall be effective immediately upon
28 filing unless a later date is specified in the rules. Any
29 rules adopted in accordance with this section shall also be
30 published as a notice of intended action as provided in section
31 17A.4.

32 Sec. 18. TEMPORARY WAGE RATE DETERMINATIONS —
33 APPLICABILITY. Until such time after the first annual review
34 of data required pursuant to this Act is completed, the
35 commissioner may utilize the wage rates and fringe benefits

1 rates as set by the federal Davis-Bacon Act, 40 U.S.C. § 3141,
2 et seq.

3 Sec. 19. EFFECTIVE UPON ENACTMENT. This Act, being deemed
4 of immediate importance, takes effect upon enactment.

5 EXPLANATION

6 This bill creates the "Public Improvement Quality Protection
7 and Safety Act".

8 A contractor is required to pay workers the same hourly
9 wage plus fringe benefits for certain public improvements as
10 the contractor would pay workers for a private construction
11 or improvement project. The bill provides that the per-hour
12 wage rate be based on what is normally paid in the area by
13 contractors for similar projects, and to be adjusted on a
14 yearly basis by the department of workforce development. The
15 bill includes specific criteria, such as cost of the public
16 improvement, for the project to qualify for the prevailing wage
17 rate.

18 The wage rates that the workers must be paid shall also
19 include fringe benefits such as health insurance, retirement
20 benefits, and costs of apprenticeship programs. The bill
21 applies to any public improvement that receives money from a
22 public body and includes most types of public improvements from
23 construction to painting to hauling.

24 According to Code section 91F.4, the labor commissioner
25 determines the wage rates for specific localities and for
26 specific crafts, classifications, and types of workers. This
27 information must be posted on the department of workforce
28 development's internet site.

29 As presented in Code section 91F.5, an interested party
30 affected by the wage rates has 15 days after the department of
31 workforce development has posted the wage rates on its internet
32 site to object in writing, stating the specific reason for the
33 objection, to the labor commissioner. The commissioner must
34 respond and either affirm or modify the determination within 15
35 days of receiving the objection. The commissioner must publish

1 any modification within five days.

2 Within 10 days of the commissioner's decision, the
3 interested party may submit an objection in writing to the
4 department of inspections and appeals. A hearing must be set
5 by the department before an administrative law judge within
6 30 days after the objection is filed. The administrative law
7 judge must make a decision about the wage rate within 20 days
8 and it is considered a final determination. The decision may
9 be appealed through judicial review under Code section 17A.19.

10 The bill provides in Code section 91F.6 that contractors
11 and subcontractors must not pay the workers less than the
12 established wage rate but does not prohibit them from paying
13 the workers more than the wage rate. The wage rate must be
14 paid without any deductions for food, sleeping quarters, use
15 of tools, or safety equipment.

16 The bill lists the requirements for public improvements
17 in Code section 91F.7, which include the requirement that a
18 public body monitor the contractors and subcontractors to
19 ensure that the wage rate is paid. A call for bids must state
20 that the wage rate must be included in the bids for the public
21 improvement. All bids shall list the specific wage rates for
22 each craft, classification, and type of worker needed for the
23 public improvement. All contractors and subcontractors are
24 required to sign a contract that states they will pay workers
25 the wage rate determined by the division. All workers who
26 will perform on a public improvement must complete at least a
27 10-hour federal occupational safety and health administration
28 approved safety program before the public improvement begins.
29 If the contractors and subcontractors are found to not be
30 paying the wage rate, the contractor's or subcontractor's right
31 to work on the public improvement and get paid for work already
32 done may be terminated. A political subdivision may choose to
33 not require prevailing wage rates for a public improvement by
34 adopting a resolution. The public must be given prior notice
35 of the proposed resolution prior to the letting of bids.

1 According to Code section 91F.8, the bill does not apply
2 to public improvement funded by the federal government. If a
3 public improvement is financed by both a state public body and
4 the federal government, then the higher of the applicable wage
5 rates shall be paid to the workers.

6 Contractors and subcontractors are required to keep detailed
7 records for at least three years about the workers, the rates
8 paid, and the hours worked for each public improvement pursuant
9 to Code section 91F.9. Contractors and subcontractors must
10 also post the wage rates for each craft, classification, and
11 type of worker in a public place where workers can see the
12 posting or at the place where they receive their wages.

13 The commissioner is given specific powers in Code section
14 91F.10 for administration, investigation, enforcement,
15 and penalization; including the power to sue to prevent a
16 contractor or subcontractor from being awarded a contract
17 for a public improvement when the wage rate requirements
18 have not been met or to withhold payments if a contractor or
19 subcontractor does not produce records upon request.

20 After receiving a written complaint, the commissioner shall
21 investigate whether there has been a violation pursuant to
22 Code section 91F.11. If the commissioner determines there
23 has been a violation, the contractor or subcontractor must be
24 given notice of that violation. The notice is a formal written
25 statement from the department of workforce development that
26 states the specific violation and the amount of money due as
27 a penalty.

28 Code section 91F.12 contains the violations and penalties
29 for public bodies that divide a public improvement to avoid
30 paying the prevailing wage rates. The Code section also
31 covers the penalties for contractors who fail to pay workers
32 the prevailing wage rates and the remedies for workers.
33 The process of notice and penalties for first, second, and
34 subsequent violations by contractors are described as well.
35 In addition to other penalties under this law, anyone who

1 attempts to get a worker to give up any part of compensation
2 on a public improvement by threat not to hire or by threat of
3 firing commits a serious misdemeanor. A serious misdemeanor
4 is punishable by confinement for no more than one year and a
5 fine of at least \$315 but not more than \$1,875. Any agreement
6 to work for less than the determined wage rate is not a defense
7 to criminal prosecution.

8 In Code section 91F.13, apprentices employed on a
9 public improvement must be registered with the office of
10 apprenticeship in the United States department of labor.
11 Apprentices must receive the wages set out in the standards of
12 apprenticeship and do only the work specified in the trade to
13 which they are apprenticed. An apprentice not registered with
14 the federal program shall be paid the wage rate the same as any
15 other worker.

16 The bill may include a state mandate as defined in Code
17 section 25B.3. The bill makes inapplicable Code section 25B.2,
18 subsection 3, which would relieve a political subdivision from
19 complying with a state mandate if funding for the cost of
20 the state mandate is not provided or specified. Therefore,
21 political subdivisions are required to comply with any state
22 mandate included in the bill.

23 The commissioner may adopt emergency rules to implement
24 the provisions of this bill and the rules will be effective
25 immediately upon filing unless a later date is specified.

26 The commissioner may use the wage rates and fringe benefits
27 rates as set by the federal Davis-Bacon Act until such time as
28 the commissioner is able to determine wage rates and fringe
29 benefits rates for the localities in the bill.

30 The bill takes effect upon enactment.